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John Watson

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EXAMINER

ARAQUE JR, GERARDO

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/541,643	Applicant(s) WATSON ET AL.	
	Examiner Gerardo Araque Jr.	Art Unit 3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/5/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Priority to PCT/GB03/00010 as been acknowledged.

Specification

1. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “**assistant operable control**” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 12 – 23** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. In regards to **claims 12 – 20**, the Examiner is unclear on how the claimed devices are linked to one another and how the communication of data is transmitted. Specifically, the applicant has claimed a plurality of devices in a system, but has failed to properly claim on the role that each device has on the other. For example, the applicant discloses a weighing apparatus, control device, assistant operable control, and customer display device. However, what is the relationship of the customer display device with the weighing device. Are they communicatively coupled in order to allow for the transmission of pertinent information regarding a transaction? Are the devices just sitting there and the effects produced by one device have no bearing on the function of the other devices.

Moreover, the applicant has disclosed a control device linked to the customer display device. However, what is the purpose of the control device? What is its

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function? Is it supposed to be the assistant operable control? Is it software? Is it hardware? Essentially, the applicant has claimed a control device, but never does anything with it.

Furthermore, the applicant has disclosed an “assistant operable control” being linked to a weighing apparatus. The applicant then discloses two embodiments in which the “assistant operable control” is incorporated or separate from the weighing apparatus. However, the Examiner asserts that the specification is unclear on what the “assistant operable control” is and how it can be incorporated or separate from the weighing apparatus. The Examiner looked upon the specification and drawings for guidance and direction, but has failed to find any disclosure on how the “assistant operable control” can be in either location in reference to the weighing apparatus. Again, is the “assistant operable control” the control device?

6. In regards to **claim 23**, the Examiner is uncertain as to whether the applicant is claiming a “data collection means” and a “processing means” or a “data collection” and a “processing means”

7. Claim element “**processing means**” is a means plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed function such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function. Specifically, it is unclear as to where the processing is taking place. Is it taking place at the weighing apparatus or at what the applicant calls the Back Office System or at some other location?

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. **Claims 12 – 16 and 19 – 23** are rejected under 35 U.S.C. 102(b) as being anticipated by **Christie (GB 2,300,509 A)**.

10. In regards to **claim 12**, **Christie** discloses a service point management system, comprising:

a) a customer display device linked to a control device (**Page 10 Lines 15 – 18 wherein a processor is arranged to drive a ticket number indicator which has a two-digit display**);

b) at least one assistant operable control operable to provide, upon actuation thereof, an indication on said customer display device of a next customer to be served (**Page 10 Lines 15 – 23 wherein a processor is arranged to drive a ticket number indicator which has a two-digit display indicating the ticket number belonging to the next customer to be served**); and

c) a weighing apparatus which is linked to said at least one assistant operable control (**Page 9 Lines 5 – 8 wherein weighing scales are disclosed and arranged to receive data**).

Moreover, in regards to the assistant operable control, the Examiner asserts this to be non-functional descriptive subject matter. That is to say, the type of data or

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software, i.e. the assistant operable control, does not provide any further structural limitations to the claimed system (apparatus). The type of data adds little, if anything, to the claim's structure, and, thus, does not serve as a limitation on the claims to distinguish it over the prior art.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

11. In regards to **claim 13, Christie** discloses wherein the at least one assistant operable control is incorporated within said weighing apparatus **(see at least Page 3 Lines 17 – 19; Page 8 Lines 31 – 36; wherein the weighing apparatus is considered to be a service point apparatus capable of storing data for the processing and handling of a product, including weighing, marking, pricing and communicating with other components of the system).**

Moreover, in regards to the assistant operable control, the Examiner asserts this to be non-functional descriptive subject matter. That is to say, the type of data or software, i.e. the assistant operable control, does not provide any further structural limitations to the claimed system (apparatus). The type of data adds little, if anything, to the claim's structure, and, thus, does not serve as a limitation on the claims to distinguish it over the prior art.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to

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patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

12. In regards to **claim 14**, **Christie** discloses and a further data storage and processing device provided adjacent to said at least one assistant operable control **(see at least Page 6 Lines 23 – 25; Page 10 Lines 15 – 18; Page 11 Lines 5 – 8 wherein storage and a processor are provided within the system, which are capable of receiving and storing data)**.

13. In regards to **claim 15**, **Christie** discloses and a further data storage processing device provided remote from said at least one assistant operable control **(see at least Page 6 Lines 23 – 25; Page 10 Lines 15 – 18; Page 11 Lines 5 – 8 wherein a storage means and processor are provided within the system, which are capable of receiving and storing data)**.

14. In regards to **claim 16**, **Christie** discloses wherein the at least one assistant operable control is provided separately from the weighing apparatus **(see at least Page 10 Lines 15 – 18, 25 – 30 wherein additional data used for various processing of the system can be stored separately from the weighing apparatus)**.

15. In regards to **claims 19 – 21**, **Christie** discloses and a queue device which provides each customer with a queue number, said queue device being linked to the management system and wherein the queue device comprises sequentially numbered tickets and wherein the queue device allocates a sequential queue number to successive customers and prints out details onto a ticket which the customer retains **(Page 10 Lines 15 – 34 wherein a ticket dispenser and counter is provided)**.

Moreover, the Examiner asserts the type of data or information provided does not provide any further structural limitations to the claimed system (apparatus). The type of data adds little, if anything, to the claim's structure, and, thus, does not serve as a limitation on the claims to distinguish it over the prior art.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

16. In regards to **claim 22, Christie** discloses further comprising an alert system which provides an indication of a variation between ideal waiting time and queue length relative to an actual waiting time of customers (**see at least Page 2 Lines 32 – 35; Page 3 Lines 1 – 10; Page 10 lines 25 – 34; Page 11 Lines 1 – 15 wherein a timing mechanism is provided**).

Moreover, the type of data, software, or information provided, does not provide any further structural limitations to the claimed system (apparatus). The type of data adds little, if anything, to the claim's structure, and, thus, does not serve as a limitation on the claims to distinguish it over the prior art.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

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17. In regards to **claim 23**, **Christie** discloses a service point management system, comprising:

a) a customer display device to display customer information (**Page 10 Lines 15 – 18 wherein a processor is arranged to drive a ticket number indicator which has a two-digit display**);

b) a customer identifier device to allocate a unique identifier to a customer (**Page 10 Lines 25 – 30 wherein a number indicator is provided**);

c) at least one weighing apparatus for weighing goods to be purchased by the customer (**Page 9 Lines 5 – 8 wherein weighing scales are disclosed and arranged to receive data**);

d) a data collection and processing means to receive data from at least the at least one weighing apparatus (**see at least Page 6 Lines 23 – 25; Page 10 Lines 15 – 18; Page 11 Lines 5 – 8 wherein storage and a processor are provided within the system, which are capable of receiving and storing data**);

e) a data network for linking said customer display device, said customer identifier device, said at least one weighing apparatus, and said data collection and processing means (**See Figure 1, 2**).

In regards to:

f) said weighing apparatus being operable to generate data relating to the customer unique identifier, a quantity and a type of goods being purchased, and a time, taken to complete a purchase; and

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g) said data being collected and processed by the data collection and processing means to generate processed data comprising stock control and management data, customer queuing data and staff performance data; and associated data, software, and information provided;

the Examiner asserts the type of data, software, or information provided does not provide any further structural limitations to the claimed system (apparatus). The type of data adds little, if anything, to the claim's structure, and, thus, does not serve as a limitation on the claims to distinguish it over the prior art.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. **Claims 17 – 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Christie (GB 2,300,509 A)**.

20. In regards to **claims 17 – 18**, **Christie** discloses wherein two customer display devices are provided, one for displaying information as to the next customer to be served, and the other for displaying information relating to promotional goods or other

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material (**Page 10 Lines 15 – 18 wherein a ticket number indicator and weighing scale for weighing, marking, and/or pricing are provided**).

wherein more than two customer display devices are provided (**Page 10 Lines 15 – 18 wherein a ticket number indicator and a plurality of weighing scales for weighing, marking, and/or pricing are provided**).

Although, **Christie** does not disclose that the service point (weighing scale) contains a display, the Examiner asserts that it would have been common sense and obvious to one having ordinary skill in the art to provide a display device on the weighing scale in order to inform the server and the customer of the price of a product. In other words, because the weighing scale also functions as a service point for marking and pricing of a product it would have been obvious to one having ordinary skill in the art that a display would have to be provided in order to convey, at least, pricing information to the user or customer.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided a display device on the weighing scales of **Christie** because the disclosed weighing scales also serve the additional function of marking and pricing a product and, as such, a display device would have been incorporated in order to convey this information to the user and customer.

Moreover, it would have been further obvious to have multiple display devices since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Further, the Examiner asserts the type of data, software, or information provided does not provide any further structural limitations to the claimed system (apparatus). The type of data adds little, if anything, to the claim's structure, and, thus, does not serve as a limitation on the claims to distinguish it over the prior art.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure can be found in the PTO-892 Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on (571) 272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. A./
Examiner, Art Unit 3689
5/22/09

/Dennis Ruhl/
Primary Examiner, Art Unit 3689